IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

WP(C).No. 19433 of 2004(L)

AGAINST THE ORDER IN OS 1783 1999 IN
EP.347/2002 of PRL.M.C.,IRINJALAKUDA

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PETITIONER:

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1. E.T.SURESH, S/O. THANKAPPAN,
ILLIKKAL HOUSE, THANISSERY P.O.,
KARALAM VILLAGE.

2. P.J.GRASIOUS, S/O.LONAPPAN,
PAZHEDATHU HOUSE, PORTHISSERY P.O.,
KARUVANNUR.

3. C.K.JAYADEVAN, S/O. RAMAN,
CHIRAYIL HOUSE, VELOOKKARA P.O.,
NADAVARAMBU.

BY ADV. SRI.BLAZE K.JOSE

RESPONDENTS:

THE CATHOLIC SYRIAN BANK LTD.,
M.O.ROAD, BRANCH, TRISSUR.

BY ADV. SRI.N.P.SAMUEL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO. 19433/2004

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1: COPY OF THE OBJECTION DATED 24.3.2003

EXT.P2: COPY OF THE ORDER IN E.P. NO. 347/2002 IN T.M.C. O.S. NO. 1783/1999 DATED 16.10.2003 OF THE PRINCIPAL MUNSIFFS COURT, IRINJALIKUDA.

/RUE COPY/

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 19433 of 2004

Dated this the 30th day of May , 2007

JUDGMENT

The judgment debtors impugns Ext.P2 order passed by the learned Munsiff directing arrest. Sri.Blaze K.Jose, the learned counsel for the petitioners submits that the impugned order is not preceded by any enquiry as contemplated under Rule 40 of Order XXI of C.P.C. The counsel further submits that the petitioners had offered to pay the amount in instalments and even on the date of Ext.P2 a sum of Rs.1,000/- was paid and that the court below was not at all justified directing arrest.

2. Sri.N.P.Sammuel, the learned Standing Counsel for the Bank submits that Ext.P1 is a copy of the objection filed by the respondent, in which the contention is only that the judgment debtors do not have means to pay the decree debt in a lump. According to Mr. Samuel means to pay a substantial portion of the decree debt will be sufficient for ordering arrest. The

counsel for the petitioner would in response submit that a careful analysis of the objection will show that what is contended is that the petitioner has means to pay at the rate of Rs.1,000/- only which is a substantial portion of the decree debt . Any admission of ability to pay Rs.1,000/- will not suffice to direct arrest without any enquiry. According to Samuel, decree was passed as far back as in 2000 and the point of time with reference to which the financial ability of the judgment debtors to pay the decree debt in a lump or a substantial portion thereof so as to entail liability to be arrested is the point of time when the decree was passed.

The impugned order is issued by the learned Munisff in 2003. Even going by the admission of the petitioners at the rate of Rs.1,000/- per month, he has already come to have about Rs.50,000/- after the decree was passed. The order of the learned Munsiff can be justified in that way also. However, considering the fact that the impugned order is not preceded by any enquiry and is issued on the basis of an affidavit alone to which a counter had been filed by the petitioners, even as I confirm Ext.P2, I direct that the order of stay presently issued by

this court will continue on condition that the petitioners will remit at the rate of Rs.3,000/- on the 15th of every months commencing from 15.6.2007. If any two instalments are defaulted, the petitioners will forfeit the above benefits in which case the impugned order will become operative.

PIUS C. KURIAKOSE,

JUDGE.

dpk